IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Krishan Lal v. Board of Revenue & Ors.

S.B.CIVIL WRIT PETITION NO.2145/2000
under Articles 226 and 227 of the Constitution of India.

Date of Order : 15th July, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. B.S.Sandhu, for the petitioner.
Mr. B.L.Tiwari, Addl.Govt.Advocate.

BY THE COURT :

By this petition for writ the petitioner is giving challenge to the judgment dated 4.5.2000 passed by Board of Revenue rejecting the review petition preferred by the petitioner giving challenge to the judgment dated 19.8.1987 passed by the Board of Revenue accepting the revision petition preferred by one Shri Banwarilal against the order dated 30.5.1992 passed by Board of Revenue.

The facts in brief are as follows:-

The petitioner was having temporary cultivation over the land situated in chak-13 SAD

square No.194/354 since samvat 2017 to 2028 (1960 to 1973). The petitioner after coming into force of Rajasthan Colonisation (Allotment to Government Land to Post 1955 Temporary Cultivation Lease Holders and Other Land Less Persons in the Rajasthan Canal Project Area) Rules, 1971 (hereinafter referred to as “the Rules of 1971) submitted an application for allotment of land for permanent cultivation on 22.10.1971.

By an order of allotment dated 30.10.1972 17.02 bighas of land was allotted to the petitioner in command area. The land allotted to the petitioner was in fact already under his temporary cultivation. The petitioner at the time of allotment of land was in employment in the Department of Education, Government of Rajasthan as a Teacher.

One Shri Banwarilal made a complaint to the allotting authority being aggrieved by the allotment of land to the petitioner. Shri Banwarilal in the application contended that the petitioner was not eligible for allotment of land under the Rules of 1971 being in government service and also being not a bonafide agriculturist. Shri Banwarilal also stated in the compliant that the petitioner while getting the land allotted concealed the fact that he was already having khatedari land in his favour. The allotting authority i.e. the Assistant Colonisation Commissioner, Suratgarh by an order dated 27.3.1984

cancelled the allotment of land made in favour of the petitioner under the order dated 30.10.1972. The allotting authority held that the petitioner was not entitled for allotment of land on the count that he was in government service at the time of allotment of land and also for the reason that he concealed the fact about having khatedari land at the time of allotment of land.

The petitioner being aggrieved by the order passed by the allotting authority on 27.3.1984 preferred an appeal before the Revenue Appellate Authority, Bikaner. The Revenue Appellate Authority, Bikaner by judgment dated 13.9.1984 accepted the appeal preferred by the petitioner in part holding therein that no material fact was concealed by the petitioner at the time of getting the land allotted under the Rules of 1971. The Revenue Appellate Authority also held that the petitioner is a bonafide agriculturist and he could not be held disentitle from getting the land allotted being a Government servant. The Revenue Appellate Authority held that the petitioner at the time of allotment of land under the Rules of 1971 was having 14 bighas and 15 biswas of agricultural land in his khatedari, therefore, only 10 bighas and 15 biswas of land could have been allotted to him. The Revenue Appellate Authority accordingly modified the order of allotment to the extent of 10 bighas and 15 biswas of land.

Shri Banwarilal, the complainant, being aggrieved by the judgment dated 13.9.1984 passed by the Revenue Appellate Authority, Bikaner preferred a revision petition before the Board of Revenue, Rajasthan, Ajmer which came to be accepted by judgment dated 30.5.1992. The Board of Revenue held that the petitioner being in government service was not entitled for allotment of land under the Rules of 1971. The Board of Revenue further held that the petitioner concealed material fact while getting the land allotted and on that count too he was not entitled for allotment of land.

The petitioner being aggrieved by the order passed by Board of Revenue exercising revisional powers preferred a special appeal before the Division Bench of Board of Revenue as provided under Section 10 of the Rajasthan Land Revenue Act, 1956 (hereinafter referred to as “the Act of 1956”). Special appeal preferred by the petitioner came to be rejected by Division Bench of Board of Revenue vide the judgment dated 30.5.1992.

The review petition preferred by the petitioner before Division Bench of Board of Revenue to review the judgment dated 19.8.1997 also came to be rejected by judgment dated 4.5.2000. Hence, this writ petition is preferred by the petitioner for

restoration of judgment dated 13.9.1984 passed by the Revenue Appellate Authority ad to quash the judgment dated 30.5.1992 passed by the Board of Revenue, the judgment dated 19.8.1997 passed by Division Bench of Board of Revenue and also the judgment dated 4.5.2000 passed by the Board of Revenue refusing to review the judgment dated 19.8.1997.

The contention of the petitioner is that the Board of Revenue failed to appreciate that at the time of allotment of land there was no provision under the Rules of 1971 making the petitioner disentitled for allotment of land being in government service. It is urged by counsel for the petitioner that the condition to the effect that a government servant shall not be entitled for allotment of land under the Rules of 1971 was added vide a notification dated 27.11.1982 which was published in official gazette on 11.1.1983. The land was allotted to him in the year 1972 and as such on the date of allotment there was no bar for allotment of land to a government servant. It is also contended by the petitioner that at the time of allotment of land his father was holding 8 bighas of land and in petitioner's family he is having three brothers, two sisters and mother, as such 8 bighas of land was in share of 7 members of his family. The petitioner, therefore, disclosed only 1 bigha and 3 biswas of land in the application concerned at the time of seeking allotment of land. The allotting

authority as well as the Board of Revenue has taken into consideration this entire 8 bighas of land as his khatedari land. The petitioner also emphasised that his father-in-law purchased 8 bighas and 7 biswas of land in favour of son of the petitioner on 28.7.1972. The fact with regard to the land owned by petitioner's son Omprakash could not be mentioned in the application as the application was submitted prior to it.

A reply to the writ petition has been filed on behalf of the respondents. It is stated by the respondents in the reply that no error was committed by allotting authority in cancelling the allotment made in favour of the petitioner. The respondents also defended the orders passed by the Board of Revenue. No specific reply has been given by the respondents with regard to averment of the petitioner that on the date of allotment of land to him there was no condition disentitling him for allotment of land on the count that he was in government service. Much emphasis is given by the respondents in reply that at the time of allotment the petitioner was already possessing khatedari land and he did not disclose this fact, as such on the basis of this concealment the allotting authority rightly cancelled the allotment made in his favour.

Heard counsel for the parties.

The first contention of the petitioner is that on the count that he was in government service the respondents allotting authority wrongly cancelled the order of allotment. I found force in this condition of the petitioner as Rule 2(xiii) was introduced in the Rules of 1971 under a notification dated 27.11.1982 which came into force on 11.1.1983. By Rule 2(xiii) the persons in government service were declared ineligible to get the land allotted under the Rules of 1971. The land was allotted to the petitioner much back in the year 1972 and on that day no such condition was in force and, therefore, there was no bar for allotment of land to a government servant. The allotting authority while cancelling the order of allotment made in favour of the petitioner on 30.10.1972 failed to appreciate this position of law.

The allotting authority as well as the Board of Revenue also erred while holding that the petitioner concealed the fact that at the time of allotment of land 8 bighas of land was already in his khatedari. In fact 8 bighas of land was for his entire family consisting of three brothers, two sisters and widow mother. The petitioner in the application for allotment of land mentioned one bigha and three biswas of land in his khatedari as a notional share.

In my considered opinion nothing wrong was committed by the petitioner while doing so. The share of the petitioner in the said land was only to the extent referred above and as such he has not concealed any fact making him disentitled from allotment of land. It is true that prior to allotment of land the petitioner acquired 8 bighas and 7 biswas of land which was purchased by his father-in-law in the name of Omprakash (son of the petitioner) on 18.7.1992. This part of land was certainly required to be reduced from the land allotted to the petitioner. The Revenue Appellate Authority considered all these facts while passing the order dated 13.9.1994. The Revenue Appellate Authority after considering all requisite facts rightly reached at the conclusion that the petitioner was entitled for allotment of 10 bighas and 15 biswas of land in the concerned area. In view of it no error was committed by the Revenue Appellate Authority by passing the order dated 13.9.1984. The Board of Revenue by its order impugned wrongly interfered with the findings given by the Revenue Appellate Authority.

In view of whatever discussed above, the writ petition stands allowed. The order dated 13.9.1984 passed by the Revenue Appellate Authority in appeal No.105/A/84 (Anx.9B) is hereby restored by quashing the judgment dated 30.5.1992 passed by the Board of Revenue in revision petition No.409/84/Ganganagar,

Banwarilal v. Krishnalal & Anr., the judgment dated 19.8.1997 passed by Division Bench of Board of Revenue in Special Appeal No.78/92/LR Ganganagar and the judgment dated 4.5.2000 passed by Board of Revenue in review petition No.30/97/LR Ganganagar.

No order as to costs.

( GOVIND MATHUR ),J.

kkm/ps.